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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/199,669	11/25/1998	ADNAN SHENNIB	ISM/005	3957

7590 01/29/2003

DONALD R GREENE
P O BOX 12995
SCOTTSDALE, AZ 852672995

EXAMINER

HARVEY, DIONNE

ART UNIT	PAPER NUMBER
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2643

DATE MAILED: 01/29/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/199,669

Applicant(s)
Shennib

Examiner
Dionne Harvey

Art Unit
2643



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-140 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claims 1-140 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

RW Barrie
REXFORD BARNIE
PRIMARY EXAMINER

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DETAILED ACTION

Election/Restriction

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-49, 98-124 and 125-137, drawn to the component mounting of a hearing device, classified in class 381, subclass 324.
 - II. Claims 50-97, drawn to a battery assembly of a hearing aid device, classified in class 38, subclass 323.
 - III. Claims 138-140, drawn to a method of testing an individuals tolerance, classified in class 029, subclass 593.
2. The inventions are distinct, each from the other because of the following reasons:

Inventions I. and II. are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the hearing apparatus of Group I. Does not require the specific battery structure as recited in the claims of Group II. The subcombination has separate utility such as in other mechanical apparatus requiring the use of a power source.
3. Inventions I & II and III are related as product and method of testing product. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the

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method of testing product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different method of testing that product (MPEP § 806.05(h)). In the instant case the method of testing product as claimed can be practiced with another materially different product.

4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

5. A telephone call was made to Donald Green on 1/16/2003 to request an oral election to the above restriction requirement, but did not result in an election being made. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dionne Harvey whose telephone number is (703) 305-1111.

D.H.



January 22, 2003



REXFORD BARNIE
PRIMARY EXAMINER